
**GARY COMMUNITY
SCHOOL CORPORATION**

620 East 10th Place – Gary, IN 46402



FOCUSING ON THE FUTURE:

Creating 21st Century Schools

(219) 881-5401 • Fax (219) 881-4102

DR. MYRTLE V. CAMPBELL, Superintendent

mvcampbell@garycsc.k12.in.us

April 11, 2011

CC Docket No. 96-45 and CC Docket No. 02-6
E-Rate Appeal Filed Electronically via the FCC ECFS System

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re:	Applicant:	Gary Community School Corporation
	Applicant BEN:	130342
	FCC FRN:	0012022539
	Form 471:	483884 (Form Identifier: GCSC471-3)
	FRN:	1340919
	Funding Year:	2005
	Services:	Internal Connections
	Service Provider:	AT&T DataComm, Inc.
	SPIN:	143004812

To Whom It May Concern:

This is an appeal of the Commitment Adjustment (“Comad”) issued by USAC to the Gary Community School Corporation (the “School Corporation”) on October 7, 2010 in connection with FRN 1340919 on Form 471 No. 483884. A copy of the Comad is attached hereto as Exhibit A. The School Corporation filed an appeal of the Comad on November 24, 2010, a copy of which is attached hereto as Exhibit B. The Administrator denied the School Corporation’s appeal on February 9, 2011.¹ A copy of the Administrator’s Decision on Appeal is attached hereto as Exhibit C. The demand for the recovery of funds is based on the following three (3) program violations alleged by USAC:

1. The School Corporation did not advertise the goods and services in local newspapers and solicit proposals from local businesses as required by Gary Community School Corporation Board (the “Board”) policy;
2. Because the School Corporation did not advertise or solicit local businesses for bids, the District only received one bid, and therefore did not select the most cost-effective product and/or service offering with price being the primary factor when filing Form 471; and
3. The School Corporation did not obtain majority Board approval for the contract with AT&T DataComm, Inc. and therefore did not have a valid and legally binding contract in place prior to filing Form 471.

¹The demand for recovery of \$125,565.00 from AT&T DataComm, Inc. is not addressed in this appeal; the recovery demand of \$82,882.00 from the School Corporation was not included in its appeal to USAC.

1. COMPETITIVE BIDDING AND LOCAL PROCUREMENT REQUIREMENTS

USAC FINDING:

The beneficiary did not advertise or solicit local business for bids for services as required in the schools procurement policy, therefore they only received one bid for the requested services.

SCHOOL CORPORATION RESPONSE ON APPEAL:

The School Corporation complied with the procurement requirements of Board Policy 618 (Public Purchasing/Public Works Authority) and Section 5-22 (Public Purchasing) of the Indiana statutes.² USAC's finding that the School Corporation was required to advertise the services and equipment in local newspapers and solicit local bids from local vendors is based on a narrow and incorrect interpretation of the local procurement rules and requirements. Board Policy No. 618 incorporates by reference the Section 5-22 of the State statute governing the procurement of supplies³ and services. A copy of the policy, which is attached hereto as Exhibit D, reads in part as follows:

The Board shall abide by the "Public Purchases" law found in IC 5-22 that governs the purchase of supplies and services except current utility services. Purchasing shall include buying, procuring, renting, leasing or otherwise acquiring supplies and services...

Section 5-22 authorizes a wide array of acceptable purchasing methods other than through advertisement and local vendor solicitation. Chapter 7 (Competitive Bidding) of the Indiana Public Purchasing Statute sets forth the requirements for competitive bids, including advertisement and local vendor solicitation. Although Section 5-22-7-1 requires purchasing agents to adhere to the competitive bidding requirements set forth therein, it also notes that other purchasing methods are authorized by Article 22. Similarly, Section 5-22-6-1 of the Code states that "[t]he purchasing agency of a governmental body may purchase services using any procedure the governmental body or the purchasing agency of the government body considers appropriate. (*Emphasis Added*). Notwithstanding the competitive bidding requirements of Section 5-22-7, Section 5-22-10 of the statute provides a number of "special purchase" exceptions to the competitive bidding requirements.

The following is a summary of the "special purchase" exceptions to the competitive bidding requirements of the Indiana law, including Sections 5-22-10-1, 5-22-10-5, 5-22-10-12 and 5-22-10-13, pursuant to which the School Corporation procured the AT&T services:

Excerpts from Special Purchasing Method of Indiana Code Section 5-22-10 et seq.

5-22-10-1 ***Purchase without soliciting bids or proposals.*** Notwithstanding any other provision of this article, a purchasing agent may make a purchase under this chapter without soliciting bids or proposals. (*Emphasis Added*)

² USAC does not allege that the School Corporation violated the E-Rate competitive bidding requirements.

³ "Supplies" are defined in Board Policy 618 as "any property, inclusive of equipment, goods and materials."

- 5-22-10-5 A purchasing agent may make a special purchase when there exists a unique opportunity to obtain supplies or services at a substantial savings to the governmental body. (*Emphasis Added*)
- 5-22-10-7 **Data processing contracts or license agreements.** A purchasing agent may make a special purchase of data processing contracts or license agreements for:
- (1) software programs; or
 - (2) supplies or services, when only one (1) source meets the using agency's reasonable requirements. (*Emphasis Added*)
- 5-22-10-8 **Compatibility of equipment, accessories, or replacement parts.** A purchasing agent may make a special purchase when:
- (1) the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the purchase; and
 - (2) only one (1) source meets the using agency's reasonable requirements. (*Emphasis Added*)
- 5-22-10-12 A purchasing agent may make a special purchase when the market structure is based on price but the governmental body is able to receive a dollar or percentage discount of the established price. (*Emphasis Added*)
- 5-22-10-13 **Single Source for Supply.** Subject to sections 14 and 15 [IC 5-22-10-14 and IC 5-22-10-15], a purchasing agent may award a contract for a supply when there is only one (1) source for the supply and the purchasing agent determines in writing that there is only one (1) source for the supply.
- 5-22-10-15 **Section 5-22-10-15(b)/Contract with federal or state agency.** A purchasing agent for a political subdivision may purchase supplies if the purchase is made from a person who has a contract with a state agency and the person's contract with the state requires the person to make the supplies or services available to political subdivisions. (*Emphasis Added*)

USAC was advised that the School Corporation purchased the FY 2005 services and products under the Special Purchasing provisions of Section 5-22-10. In its appeal, the School Corporation stated as follows:

Indiana law regarding public purchasing was followed (please see Attachment B IC Special Purchase Methods). This is the appropriate chapter for a purchasing agent to follow when it comes to purchase of internal connections. Specifically Indiana Public Purchasing Law allows 'a purchasing agent may make a purchase under this chapter without soliciting bids or proposals.' IC 5-22-10-5 further states "A purchasing agent may make a special purchase when there exists a unique opportunity to obtain supplies or services at a substantial savings to the government." In this case the Director of Purchasing for the Gary Community School Corporation determined that there was a substantial savings when AT&T based their quote from a State Master Contract QPA⁴ 9705. (*See attached School Corporation Appeal, Exhibit B, P. 2*).

⁴ QPA is a Quantity Purchase Agreement awarded by the Indiana Office of Administration Procurement Division.

The In House Counsel for the School Corporation also provided USAC with an opinion that the procurement of the services in question were pursuant to legally permitted methods under Section 5-22-10 of the Indiana State procurement statute. A copy of the opinion is attached hereto as Exhibit E. USAC failed to recognize the applicability of the Special Purchasing provisions of Section 5-22-10 of Indiana law that the School Corporation utilized in making the purchases, and as referenced in the opinion of the School Corporation's In House Counsel. Instead, USAC focused solely on the competitive bidding requirements of Chapter 7 of the Public Purchasing statute, which resulted in an unduly narrow interpretation of the local procurement requirements. We do not believe it appropriate for USAC to select one provision of the Indiana statute without including the applicable provisions thereof used by the School Corporation, and which also establish compliance by the School Corporation. We hereby respectfully request that the Commission reverse USAC's finding in connection with the alleged competitive bidding violation.

2. COST-EFFECTIVENESS OF THE SOLUTION SELECTED

USAC FINDING:

The beneficiary did not advertise or solicit local businesses for bids for services as required in the schools procurement policy, therefore they only received one bid for the requested services. FCC rules require applicants to have a valid contract as defined by the state procurement laws and select the most cost-effective product and/or services offering with price being the primary factor when they submit the Form 471. (Emphasis Added)

SCHOOL CORPORATION RESPONSE ON APPEAL:

First, we would like to note that the standard articulated by the FCC is not that the selected solution be the "most" cost-effective, but that it must be a cost-effective solution, as stated in its 2003 Ysleta Order, where the Commission stated:

Even if an applicant receives only one bid in response to an FCC Form 470 and/or RFP, it is not exempt from our requirement that applicants select cost-effective services. The Commission has not, to date, enunciated bright-line standards for determining when particular services are priced so high as to be considered not cost-effective under our rules. There may be situations, however, where the price of services is so exorbitant that it cannot, on its face, be cost-effective. For instance, a proposal to sell routers at prices two or three times greater than the prices available from commercial vendors would not be cost effective, absent extenuating circumstances.

In the present case, the School Corporation understands that a single bid does not automatically represent a cost-effective solution. However, the receipt of only one (1) proposal does not, in and of itself, mean that the selected services do not represent a cost-effective solution. The School Corporation provided USAC with very specific and objective grounds for establishing the cost-effectiveness of the AT&T DataComm, Inc. solution. The information provided to USAC in the applicant's response to the audit is summarized as follows:

- A. At the time, there was a State master contract in place for telecommunications and network services, and AT&T was an approved vendor under said State master contract. This type of State contract is referred to in Indiana as a Quantity Purchase Agreement (QPA). The Indiana Department of Administration negotiates discounted pricing under

each QPA based upon the State's volume purchasing and passes the substantial cost savings through to state agencies and political subdivisions, including school corporations. Using QPA pricing is an acceptable method of procurement, and the School Corporation could have purchased the equipment and services from AT&T under the QPA pursuant to Section 5-22-10-15(b) of the Indiana Code, without a separate competitive solicitation.

- B. Also at that time, Cisco verified to the School Corporation that AT&T was at the highest Cisco partner level, and therefore AT&T's pricing would be lower than any other local vendor could provide.
- C. AT&T further enhanced the cost-effectiveness of its proposed solution by giving the School Corporation a credit for a trade-in of existing equipment, effectively bringing the overall cost of the contract with the School Corporation to below the pricing available under the State QPA.

The School Corporation believes that these facts, which formed the basis of the School Corporation's selection of AT&T DataComm, Inc., clearly establish that the applicant's selection was a cost-effective solution in compliance with the requirements of the E-Rate program. Therefore, we hereby respectfully request that the Commission reverse USAC's finding that the School Corporation failed to select a cost-effective solution.

3. MAJORITY BOARD APPROVAL AND VALID CONTRACT

USAC FINDING:

The School Corporation did not have a contract in place at the time of submission of the Form 471...This determination was based on documentation showing the applicant renewed pre-existing contracts with service providers without getting Board of Trustees approval as required under its bylaws.

SCHOOL CORPORATION RESPONSE ON APPEAL:

The School Corporation posted a Form 470 and entered into a new contract for the services covered by FRN 1340919. We believe USAC confused the facts pertaining to this FRN with other FY 2005 contracts that were in fact renewed. It is our understanding that the issue here is whether the Board approved the contract with AT&T DataComm, Inc. in accordance with Board policy. Again, we believe USAC's interpretation of Board rules is incorrect.

The Gary Community School Corporation Board of Trustees is comprised of seven (7) members. Six (6) of the members were present at the February 8, 2005 Board meeting when the vote took place on the contract in question. The voting was as follows: 3 Ayes, 1 Nay and 2 Abstentions. Initially, the Board President announced that the motion to approve the contract had failed. However, the Board member who had voted against the contract, then announced that the contract had in fact been approved, for the following reason:

Mr. Scott: If I may clarify the vote. The motion passes. We operate under Robert's Rule of Order. According to Robert's Rule of Order, everyone present has an opportunity to vote. When the roll call is made the abstentions automatically go to the majority of those who vote either aye or nay. In this instant the majority of those who voted aye or nay was in the aye column;

therefore, the abstentions would flow over into the aye column, which means that the motion did pass.

Thereafter, the Board President acknowledged the correction and announced that the motion carried. Excerpts from the Board meeting minutes are attached hereto as Exhibit E. The effect of the vote as described by Board Member Scott is the manner in which the School Corporation has consistently treated abstentions, namely, that every abstention is counted as a vote with the prevailing majority. This interpretation is also consistent with Robert's Rules of Order, which provides that "[w]hile it is the duty of every member who has an opinion on the question to express it by his vote, yet he cannot be compelled to do so. He may prefer to abstain from voting, though he knows the effect is the same as if he voted on the prevailing side." (*Emphasis Added*)

We find the Indiana Supreme Court's decision in *The Rushville Gas Company v. The City of Rushville et al*, 121 Ind. 206; 23 N.E. 72 (1889), to be instructive with regard to this issue. There, the Indiana Supreme Court interpreted Section 20-26-4-3(f) of the Indiana Code that legislates Meetings of the Governing Body of School Corporations. Section 20-26-4-3-(f) is identical to Board Policy No. 123 (Quorum). Both the Board policy and the State statute read as follows:

At a meeting of the governing body, a majority of the members shall constitute a quorum. No action may be taken unless a quorum is present. Except where a larger vote is required by statute or rule with respect to any matter, a majority of the members present may adopt a resolution or take any action. (*Emphasis Added*)

In interpreting the Indiana statute, the Court reasoned as follows:

If members present desire to defeat a measure they must vote against it, for inaction will not accomplish their purpose. Their silence is acquiescence, rather than opposition. Their refusal to vote is, in effect, a declaration that they consent that the majority of the quorum may act for the body of which they are members. (*Emphasis Added*)

The Rushville Gas Company v. The City of Rushville et al, 121 Ind. 206; 23 N.E. 72 (1889); followed by the Indiana Appellate Court in *Board of School Trustees of the South Vermillion School Corporation*, 492 N.E.2d 1098; 1986 Ind. App. LEXIS 2591 (1ST Dist.). The treatment of the abstentions by the Court, meaning the abstaining members are deemed to consent to the majority vote, is consistent with the School Corporation Board's determination that motion to approve the AT&T contract passed. As is the Board's practice, the two (2) abstentions are assigned to the prevailing "aye" vote, resulting in a final vote of 5-1 in favor of the contract. The Superintendent signed the contract that same day following the Board meeting. Consequently, the School Corporation did in fact have a valid and legally binding contract prior to filing of its Form 471 on February 18, 2005. Therefore, we hereby respectfully request that the Commission reverse USAC's finding of a contract violation.

4. REQUEST FOR WAIVER OF FCC RULES

The School Corporation believes that it complied with E-Rate program competitive bidding and contracting rules, including selecting a cost-effective solution, and that it delivered sufficient evidence of compliance to USAC. At a minimum, we believe that we have demonstrated a good faith effort to comply with all program and local procurement rules. The School Corporation posted the Form 470, waited more than the requisite 28 days, negotiated a contract with AT&T that generated savings even greater than the pricing for the same services products offered by AT&T under the State QPA, secured Board approval of the contract and signed the contract before filing the Form 471. We believe that the demand for repayment of more than \$2.1 million would be an excessive penalty, given the spirit and intent of the program and our good faith efforts. Therefore, to the extent the Commission determines that we have not fully demonstrated compliance with each program requirement, we hereby respectfully request a waiver of the rules with respect to which non-compliance is found by the Commission.

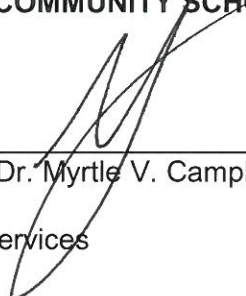
Thank you for your time and consideration. You are hereby authorized to contact our E-Rate Consultant, Elaine L. Williams, if you have any questions concerning this appeal or require additional information. Her contact information is as follows:

Elaine L. Williams
ConnectED Consulting Services LLC
E-Rate Consultant No. 16063207
Phone: 312-733-7995; Cell: 312-607-3791
Email: ewilliams@getconnect-ed.com

Very Truly Yours,

GARY COMMUNITY SCHOOL CORPORATION

By



Dr. Myrtle V. Campbell, Superintendent

cc: Alesia Pritchett, CPA, Director of Business Services
Ragen H. Hatcher, In House Counsel
Brett Behrens, AT&T DataComm, Inc.

ATTACHMENTS:

Exhibit A: Commitment Adjustment Letter dated October 7, 2010
Exhibit B: School Corporation Appeal dated November 24, 2010 (Attachments omitted because attached to this appeal)
Exhibit C: Administrator's Decision on Appeal dated February 9, 2011
Exhibit D: Board Policy No. 618 (Public Purchasing)
Exhibit E: In House Counsel Opinion dated September 7, 2010
Exhibit F: Excerpts from Minutes of Board Meeting on February 8, 2005

EXHIBIT A
Commitment Adjustment Letter dated October 7, 2010



Universal Service Administrative Company

Schools and Libraries Division

FRN 1340919

Notification of Commitment Adjustment Letter

Funding Year 2005: July 1, 2005 - June 30, 2006

October 07, 2010

Anne M. Mallett

GARY COMM SCHOOL CORPORATION

620 E. 10th Place

Gary, IN 46402 2731

Re: Form 471 Application Number:	483884
Funding Year:	2005
Applicant's Form Identifier:	GCSC471-3
Billed Entity Number:	130342
FCC Registration Number:	0012022539
SPIN:	143004812
Service Provider Name:	AT&T DataComm, Inc.
Service Provider Contact Person:	Brett Behrens

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Brett Behrens
AT&T DataComm, Inc.

Funding Commitment Adjustment Report for
Form 471 Application Number: 483884

Funding Request Number:	1340919
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143004812
Service Provider Name:	AT&T DataComm, Inc.
Contract Number:	N/A
Billing Account Number:	219-881-6400
Site Identifier:	130342
Original Funding Commitment:	\$2155,062.96
Commitment Adjustment Amount:	\$2155,062.96
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$2152,971.96
Funds to be Recovered from Applicant:	\$2152,971.96

Funding Commitment Adjustment Explanation:

After a thorough review, it was determined \$125,565.00 was improperly disbursed for this funding request. During the course of an audit it was determined that funding was disbursed for the following ineligible items: Two redundant supervisor engines model WS-X4013 and/or model WS-SUP720-3B was received and invoiced for modular switch. FCC rules provide that funding may be approved only for eligible products and/or services. The USAC web site contains a list of eligible products and/or services. See the web site, www.universalservice.org/sl/about/eligible-services-list.aspx for the Eligible Services List. On the SPAC Form, the authorized person certifies at Item 10 that the service provider has billed its customer for services deemed eligible for support. Therefore, USAC has determined that the service provider is responsible for this rule violation. Accordingly, USAC is seeking recovery of \$125,565.00 of improperly disbursed funds from the service provider.

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of an audit, it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. In addition, on your FY 2005 FCC Form 470 you certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. This determination was based on documentation showing the applicant renewed pre-existing contracts with service providers without getting Board of Trustees approval as required under its bylaws. In addition, the beneficiary did not advertise or solicit local businesses for bids for services as required in the schools procurement policy, therefore they only received one bid for the requested services. FCC rules require applicants to have a valid contract as defined by the applicants state procurement laws and select the most cost-effective product and/or service offering with price being the primary factor when they submit the Form 471. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471 that meets the state laws definition of a valid contract and you failed to comply with local and state procurement laws you violated the competitive bidding process, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

In addition, it was determined that this funding commitment must be rescinded in the amount of \$82,882.00. FCC rules require the billed entity to certify on behalf of the entities listed on the Form 471 application that the entities have secured access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections, necessary to make effective use of the services purchased, as well as to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. This requires you to pay your service provider the full cost of the non-discounted portion you owe to your service provider from the funds you budgeted within that funding year. During the course of an audit you failed to demonstrate that at the time of filing the Form 471 the financial resources necessary to pay the non-discounted charges on your application, as well as the rest of the items that you outlined in your technology budget, had been secured. The Beneficiary did not adequately plan for the implementation of Voice over IP (VOIP) telephony at the 24 schools that purchased such equipment. The Beneficiary did not purchase VOIP phones for these facilities and did not otherwise prepare the facilities for this deployment. Consequently, the Beneficiary purchased more equipment than was necessary. As a result, the commitment has been rescinded in the amount of \$82,882.00 and USAC will seek recovery of any disbursed funds. This amount is included in the finding above.

EXHIBIT B
School Corporation Appeal dated November 24, 2010

GARY COMMUNITY SCHOOL CORPORATION



FOCUSING ON THE FUTURE:

Creating 21st Century Schools

(219) 881-5401 • Fax (219) 881-4102

Dr. Myrtle V. Campbell, Superintendent

mvcampbell@garycsc.k12.in.us

620 E. 10th Place – Gary, IN 46402

November 24, 2010

Letter of Appeal
Schools and Libraries Division – Correspondence Unit
100 S. Jefferson Road
PO Box 902
Whippany, NJ 07981

Person Who Can Most Readily Discuss This Appeal.

Name: Charlie Hobbs

Telephone Number: 765-914-3268 (cell)

Fax Number: 765-855-1615

E-mail Address: chobbs@admtec.com

This is a letter of appeal.

APPEAL Notification of Commitment Adjustment Letter

Funding Year 2005: July 1, 2005 – June 30, 2006

Date of the Notification of Commitment Adjustment letter: October 7, 2010

FRN: 1340919

Billed Entity Name: Gary Community School Corporation

Form 471 Application Number: 483884

Billed Entity Number (BEN): 130342

Billed Entity FCC RN: 0012022539

Applicant Form Identifier: GCSC471-3

Service Provider Identifier Numbers (SPIN): 143004812

I am appealing the determination that this funding commitment must be rescinded in full. *"During the course of an audit, it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. In addition, on your FY 2005 FCC Form 470 you certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. This determination was based on documentation showing the applicant renewed pre-existing contracts with service providers without getting Board of Trustees approval as required under its bylaws. In addition, the beneficiary did not advertise or solicit local businesses for bids for services as required in the schools procurement policy, therefore they only received one bid for the requested services. FCC rules require applicants to have a valid contract as defined by the applicants state procurement laws and select the most cost-effective product and/or service offering with price being the primary factor when they submit the Form 471."*

Rationale:

The establishing 470 (**please see Attachment A**) was 470 #682610000502831 with a Posting Date of 10/01/2004. The establishing 470 becomes the basis for competing providers to submit proposals. Block 2 of the 470 clearly indicates "services for which a new written contract is sought for the funding year in Item 2." There was no pre-existing contract in place for the services filed for on the 471 application number 483884.

Concerning the certification made "complied with all FCC, state and local procurement/competitive bidding requirements." By complying with all the Federal procedures for selection of a vendor that School Corporation has also complied with all procedures for the State of Indiana and all policies of the Gary Community School Corporation.

The FCC Form 470 #682610000502831 was filed as required by Federal procedures.

Indiana law regarding public purchasing was followed (**please see Attachment B IC 5-22-10 Special Purchase Methods**). This is the appropriate chapter for a purchasing agent to follow when it comes to purchase of internal connections. Specifically Indiana Public Purchasing Law allows "a purchasing agent may make a purchase under this chapter without soliciting bids or proposals." IC 5-22-10-5 further states "A purchasing agent may make a special purchase when there exists a unique opportunity to obtain supplies or services at a substantial savings to the government." In this case the Director of Purchasing for the Gary Community School Corporation determined that there was a substantial savings when AT&T based their quote from a State Master Contract QPA 9705.

Local Gary Community School Corporation Policy 618 (**please see Attachment C Policy 618**) specifically states in paragraph 1 that "The Board shall abide by the "Public Purchases" law. Found in IC 5-22..." It is an acceptable practice for the Director of Purchasing to use IC 5-22-10 for the purchase of equipment. Indiana law supersedes local policy.

The In House Counsel for the Gary Community School Corporation has also issued an opinion that there was no violation of the policies of the school corporation when using IC 5-22-10. (**please see Attachment D**).

Concerning the receiving of Board approval. The Board approved the contract at its regular meeting February 8, 2005 (**please see Attachment E this document does not include every page of the Board minutes only those pages that consider the recommendation and record of the vote**).

I am NOT appealing "it was determined \$125,565.00 was improperly disbursed.... USAC is seeking recovery of \$125,565.00 of improperly disbursed funds from the service provider."

I am NOT appealing the determination "that this funding commitment must be rescinded in the amount of \$82,882.00."

Thank you for your consideration of this appeal.

Respectfully submitted,



Charlie Hobbs, Erate Contact

cc: Brett Behrens
AT&T DataComm, Inc

EXHIBIT C
Administrator's Decision on Appeal dated February 9, 2011



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

February 09, 2011

Charlie Hobbs
AdTec
P.O. Box 97
Centerville, IN 47330

Re: Applicant Name: GARY COMM SCHOOL CORPORATION
Billed Entity Number: 130342
Form 471 Application Number: 483884
Funding Request Number(s): 1340919
Your Correspondence Dated: November 24, 2010

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2005 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1340919
Decision on Appeal: **Denied**
Explanation:

- According to our records, it has been determined that the findings with respect to the contract and competitive bid violations as outlined in a Commitment Adjustment Letter (CAL) dated October 7, 2010 should not be overturned. You have not provided acceptable documentation that a valid signed contract was in place. Furthermore, you have failed to submit evidence to overcome the competitive bid violations as cited in the Commitment Adjustment Letter. Therefore, your appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal

Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Anne M. Mallett

EXHIBIT D
Board Policy No. 618 (Public Purchasing/Public Works Authority)

Business, Facilities and Food Service
Policy 618
Public Purchasing/Public Works Authority

The Board shall abide by the —Public Purchases|| law, found in IC 5-22 that governs the purchase of supplies and services except current utility services. Purchasing shall include buying, procuring, renting, leasing or otherwise acquiring supplies and services.

The Board shall abide by the —Public Works|| law, found in IC 36-12 that governs the contracting for public works projects.

“Supplies” are defined as any property, inclusive of equipment, goods and materials.

“Services” means the furnishing of labor, time or effort by a person, not involving the delivery of specific supplies other than printed documents or other items that are merely incidental to the required performance.

“Public Works” is defined as the construction, reconstruction, alteration or renovation of a public building, airport facility, highway, street, bridge, sewer, drain or other structure or improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by a political subdivision under a lease containing an option to purchase.

Whenever the total price of each item of supplies and services to be purchased annually is less than seventy-five thousand dollars (\$75,000.00), the board may purchase supplies and services on the open market per guidelines found in IC 5-22-7 and the attached board procedures.

The board may purchase services pursuant to IC 5-22-6-1 using the attached procedures.

Whenever an item of supplies and services to be purchased annually, using federal dollars, is seventy five thousand dollars (\$75,000.00) or more, the board shall purchase those items according to the federal statutes that regulate federal purchases.

Purchases shall not be artificially divided to constitute a small purchase as defined in IC 5-22-8.

Bids shall be advertised in local newspapers as defined in IC 5-3-1-0.4 and per requirements found in IC 5-3-1 and the attached board procedures

The purchasing agency is the Gary Community School Corporation and is defined as the governmental body authorized to enter into contracts.

The purchasing agent is defined as the individual authorized by the purchasing agency to act as an agent for the purchasing agency in the administration of the duties of the purchasing agency.

The director of purchasing shall act as the purchasing agent and maintain all records in accordance with state statute. The purchasing agent shall prepare, issue revise, monitor and maintain the use of specifications, advertise proposals, open bids, evaluate and recommend the awarding of contracts for the purchase of supplies and services under IC 5-22-5-2.

The board encourages the purchase of supplies and services from local businesses. The local business preference in the non-bid area is 10% for purchases from \$1 - \$24,999 and 5% for purchases \$25,000 - \$74,999.

A local business is defined as a business with an operational office or facility located within the city limits of Gary, Indiana. The business must meet certification requirements of the Gary Community School Corporation.

The Board of School Trustees shall take final action and approve or ratify all purchases at its regularly scheduled meetings.

The adoption of this policy and the accompanying procedures shall take precedence over all previously approved policies and resolutions addressing purchasing authority.

EXHIBIT E
In House Counsel Opinion Dated September 7, 2010

**GARY COMMUNITY
SCHOOL CORPORATION**



**A NEW DIRECTION: Focus on Accountability and
Continuous School Improvement**
(219) 881-5460 • Fax (219) 886-6752

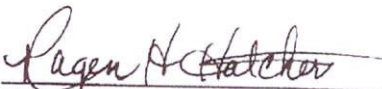
LEGAL SERVICE
620 - Gary, IN 46407

RAGEN HATCHER-MATTHEWS, In House Counsel
rhatcher1@garycsc.k12.in.us

M E M O R A N D U M

September 7, 2010

To: Mr. Brian Murphy
USAC Compliance Officer

From: 
Ragen H. Hatcher
In House Counsel

Subject: Audit Response for Non-Compliance Letter

The Gary Community School Corporation utilizes special purchase methods as allowed in Indiana Code 5-22-10 and as outlined in Policy 618 of the Gary Community School Corporation Board of School Trustees policy manual. Within those methods includes entitled Savings to Government Body, Data Processing Contract or License Agreement, Government Discount Available and Single Source for Supply.

Savings to governmental body includes a special purchase when there exists a unique opportunity to obtain supplies or services at a substantial savings as offered by AT&T through the ERate program. A governmental discount was available to the Gary Community School Corporation if ERate was utilized. Further, AT&T was a single source supplier in the State of Indiana for phone services.

Based on Policy 618 and Indiana Code, there was no violation of the policies of the Corporation.

Thank you.

RHH/qdb

C: Ms. Alicia Pritchett

File: Mr. Brian Murphy-Audit Non-Compliance Ltr.

EXHIBIT F

Excerpts from Minutes of Board Meeting on February 8, 2005

Mr. Washington: Are there any other questions by Board Members? Let me say this on an ending note regarding this contract. I have to apologize to a certain extent, as far as this contract is concerned when I asked if there were any other quotes and I am looking at the memo and understanding the reason why there were no other contractors on that list at the Budget/Finance Committee meeting was because nobody else applied for this via the internet.

I know Mr. Scott made the issue about advertising in the newspaper, but for E-Rate and government if you must do this on the internet then you have to do it. It is not my responsibility and this Board's responsibility to make sure people follow timely deadlines in making sure they apply for contracts. If we do that then we are not doing our Board responsibility, but I am not going to twist anybody's arm to do anything that they should be doing. It is the administration's responsibility because we all know in the past there have been different family members of administrators and other folks who have made a lot of money off of this district regarding contracts and when it refers to someone saying, "good ole boys network", I don't deal with a good ole boys network and I don't instruct anyone to do anything unethically that they are not supposed to do and they follow the process. If you don't follow the process that the Federal Government gives, you will be in a world of trouble.

Now, the question remain, can we put this to a vote or do we need to take this off?

Mr. Morris: Mr. Chairman, I don't see how we have time to take it off. Our back is against the wall.

Mr. Washington: That is one of the points that I am making because I get tired of people coming up to the podium saying that they are not given a chance when we know that is not the case in a lot of situations. People tell us to be accountable. We need our businesses and other folks who do business with the district to be accountable and be timely. I am sorry about everything that has happened. We want our minority businesses to have an opportunity, but there is a window here and I of all people want to make sure that the process is done correctly and there is a process.

We would like a roll call.

Roll Call

Vote: District Network Upgrade Proposal

Ayes: Ledbetter, J. Morris, Pulliam

Nays: Scott

Abstain: D. Morris, Washington

President Washington declared the motion defeated.

Atty. Pulliam: If Mr. Keith is saying that he thinks we should do it and not risk losing the funding.

Mr. Scott: If I may clarify the vote. The motion passes. We operate under Robert's Rule of Order. According to Robert's Rule of Order everyone present has an opportunity to vote. When the roll call is made the abstentions automatically go to the majority of those who vote either aye or nay. In this instant the majority of those who voted aye or nay was in the aye column; therefore, the abstentions would flow over into the aye column, which means that the motion did pass.

Mr. Washington: I stand corrected. Thank you, Mr. Scott for that. The motion is carried. Thank you. We will now move to the public participation portion of our agenda.

PUBLIC PARTICIPATION

Mr. Washington: The following persons addressed the Board as follows: